Haji Jaafar bin Haji Hashim & Ors v Rohani bte Ab Latip

HIGH COURT (MELAKA) — CIVIL APPEAL NO 1–12–25 OF 2004
LOW HOP BINGJ
21 FEBRUARY 2006

Civil Procedure — Appeal — Subordinate court appeal — Whether in determining value of the subject matter general damages should be included — Courts of Judicature Act 1964 s 28(1)

Landlord and Tenant — Licensee — Consent to demolish house on land given by licensee — Whether tenant or licensee had legal capacity to give such consent

Tort — Trespass to land — Damages — Actuated by the best of intentions and the most laudable of objectives — Whether consent of owner still needed to demolish the house

This was an appeal by the appellants ('the defendants') against the decision of the learned sessions court judge ('the trial judge') who had given judgment in favour of the plaintiff in the sum of RM10,000 by way of special damages with interest at 4% pa from the date of judgment to the date of realisation, general damages to be assessed and costs of RM248. The first to the sixth defendants were the members of the JKKK, ie Kampung Development and Security Committee ('the Committee'), while the seventh defendant was at all material time and currently is the state assemblyman for Serkam Melaka and also an Executive Councillor in the state of Melaka. The eighth defendant was the occupant of the house which was the subject matter herein. With effect from 5 May 1997, the plaintiff became the registered owner of 5/8 undivided share in the land held under MCL 554 Lot 1194 in the Mukim of Serkam district of Jasin ('the land') which was purchased through her husband (SP2) from the former owners. On the land, the plaintiff had at her own expense built a semi-permanent house which was occupied by the eighth defendant ('the house'). In the month of May 2001, without the consent and permission of the plaintiff, the Committee had demolished the house so as to replace it with another house under the Projek Perumahan Rakyat Termiskin (the Poor Citizens Housing Project) ('the Project'). The defendants submitted that the eighth defendant had given his consent to the other defendants to enter the land. The plaintiff claimed special damages of RM10,000 for the house, in addition to general damages arising from the demolition. The learned sessions court judge delivered judgment in favour of the plaintiff in the sum of RM10,000 by way of special damages with interest at 4% pa from the date of judgment to the date of realisation, general damages to be assessed and costs of RM248. This was an appeal by the appellants-defendants ('the defendants') against the decision. At the hearing of the appeal, counsel for the respondent raised a preliminary objection that the value of the subject matter in this

appeal was RM10,00 and so under s 28(1) of the Courts of Judicature Act 1964 ('s 28(1) of the CJA'), the defendants could only appeal on a question of law.

Held, dismissing the appellants' appeal with parties to bear their own costs respectively:

(1) The order and the appeal against it were not merely confined to the value of RM10,000. The RM10,000 represented special damages only. The order also includes general damages to be assessed by the trial court. Therefore, the value of the subject matter in this appeal is far beyond the scope of s 28(1) of the CJA, in which case the 'question of law' requirement does not apply to the defendants' statutory right of appeal (see paras 10 & 11).

(2) Even by accepting the defendants' submission that the eighth defendant had given his consent to the other defendants to enter the land, the eighth defendant was a mere licensee who had neither been the owner of the land nor the (semi permanent) house. The eighth defendant had no legal capacity to give any consent to the defendants to enter the land; or to carry out demolition of the house which was the plaintiff's property, however dilapidated the house might have appeared to be. The consent could only be given by the plaintiff as the registered owner of the land and the house (see para 17).

(3) No doubt whatsoever that all the defendants had been actuated by the best of intentions and the most laudable of objectives in demolishing the house and replacing it with the project house as this would most certainly had alleviated the problems of the poor including the eighth defendant. However, the consent of the owner, ie the plaintiff is indispensable as the plaintiff shall not be deprived of her property (the house) save in accordance with the law: art 13 of the Federal Constitution (see para 18).

(4) The defendants' demolition exercise without the plaintiff's consent constitutes trespass in law, thereby giving rise to the remedy of damages to the aggrieved party, ie the plaintiff (see para 18).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu-perayu ('defendan-defendan') terhadap keputusan hakim mahkamah sesyen yang bijaksana ('haim perbicaraan') yang telah memberikan penghakiman menyebelahi plaintif bagi jumlah RM10,000 melalui ganti rugi khas berserta faedah 4% setahun dari tarikh penghakiman hingga tarikh realisasi, ganti rugi am yang ditaksirkan dan kos RM248. Defendan-defendan pertama hingga keenam merupakan ahli-ahli JKKK, iaitu Jawatankuasa Kemajuan dan Keselamatan ('Jawatankuasa'), manakala defendan ketujuh pada setiap masa material dan sekarang ini merupakan ahli dewan undangan negeri untuk Serkam Melaka dan juga anggota Eksekutif Dewan Bandaraya Melaka. Defendan kelapan merupakan penghuni rumah yang menjadi perkara pokok di sini. Berkuat kuasa 5 Mei 1997, plaintif adalah pemilik berdaftar kepada 5/8 bahagian yang belum dibahagikan atas tanah yang dipegang di bawah MCL 554 Lot 1194di Mukim Serkam daerah Jasin ('tanah tersebut') yang telah dibeli melalui suaminya (SP2) daripada pemilik

A sebelumnya. Atas tanah tersebut, plaintif telah dengan perbelanjaannya sendiri membina sebuah rumah separa tetap yang didiami oleh defendan kelapan ('rumah tersebut'). Pada bulan Mei 2001, tanpa persetujuan dan kebenaran plaintif, Jawatankuasa itu telah meruntuhkan rumah tersebut bagi menggantikannya dengan sebuah rumah di bawah Projek Perumahan Rakyat Termiskin (the Poor Citizens
B Housing Project) ('Projek tersebut'). Defendan-denfendan telah berhujah bahawa defendan kelapan telah memberikan persetujuannya kepada defendan yang lain untuk memasuki tanah tersebut. Plaintif telah menuntut ganti rugi khas sejumlah RM10,000 untuk rumah tersebut, selain daripada ganti rugi yang timbul daripada keruntuhan itu. Hakim mahkamah sesyen yang bijaksana telah menyampaikan penghakiman menyebelahi plaintif untuk jumlah RM10,000 melalui ganti rugi khas
C berserta faedah 4% setahun dari tarikh realisasi, ganti rugi am untuk ditaksirkan dan kos RM248. Ini adalah rayuan oleh perayu-defendan('defendan tersebut') terhadap keputusan itu. Dalam perbicaraan rayuan itu, peguam bagi pihak responden telah menimbulkan satu bantahan awal bahawa nilai perkara pokok itu dalam rayuan ini adalah RM10,000 dan oleh itu di bawah s 28(1) Akta Mahkamah Kehakiman 1964
D ('s 28(1) AMK'), defendan tersebut hanya boleh merayu berdasarkan persoalan undang-undang.

Diputuskan, menolak rayuan perayu-perayu dan pihak-pihak hendaklah
E menanggung kos masing-masing:

(1) Perintah dan rayuan terhadapnya tidak terbatas kepada nilai RM10,000. RM10,000 mewakili ganti rugi khas sahaja. Perintah itu juga termasuklah ganti rugi am yang perlu ditaksirkan oleh mahkamah perbicaraan. Oleh itu, nilai perkara pokok dalam rayuan ini melampaui skop s 28 AMK di mana
F keperluan 'question of law' tidak terpakai terhadap hak rayuan statutori defendan tersebut (lihat perenggan 10 & 11).

(2) Jikapun dengan menerima hujah defendan tersebut yang defendan kelapan telah memberikan persetujuannya kepada defendan-defendan lain untuk memasuki tanah tersebut, defendan kelapan hanyalah pemegang lesen yang
G bukan pemilik tanah maupun rumah (separa tetap) itu. Defendan kelapan tidak mempunyai kapasiti sah untuk memberikan apa-apa persetujuan kepada defendan tersebut untuk memasuki tanah tersebut; atau meruntuhkan rumah tersebut yang merupakan harta tanah plaintif, jikapun rumah itu dalam keadaan usang. Persetujuan tersebut hanya boleh diberikan oleh plaintif
H sebagai pemilik berdaftar tanah dan rumah tersebut (lihat perenggan 17).

(3) Tidak diragui bahawa kesemua defendan tersebut telah didorong oleh niat baik dan tujuan yang patut dipuji dalam meruntuhkan rumah tersebut dan menggantikannya dengan rumah projek kerana ia sememangnya mengurangkan masalah orang miskin termasuklah defendan kelapan. Bagaimanapun, persetujuan pemilik, iaitu plaintif sangat diperlukan kerana
I plaintif tidak akan terkilan akan harta tanahnya (rumah tersebut) kecuali dengan cara yang sah di sisi undang-undang: perkara 13 Perlembagaan Persekutuan (lihat perenggan 18).

(4) Perlakuan defendan tersebut meruntuhkan tanpa persetujuan plaintif membentuk satu pencerobohan dari segi undang-undang, oleh itu menimbulkan remedi ganti rugi kepada pihak yang terkilan, iaitu plaintif (lihat perenggan 18).]

Notes

For cases on damages, trespass to land, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1469–1472.

For cases on licensee, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1182–1228.

For cases on subordinate court appeal, see 2 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 1342–1346.

Legislation referred to

Courts of Judicature Act 1964 s 28(1)
Federal Constitution art 13

Datuk Hj Md Latip bin Sarrugi (Mohd Latip & Associates) for the defendant.
Haji Yusof bin Hj Rahmat (Yusof Rahmat & Co) for the plaintiff.

Low Hop Bing J:

APPEAL

[1] This is an appeal by the appellants-defendants ('the defendants') against the decision of the learned sessions court judge ('the trial judge') who had on 13 May 2004 given judgment in favour of the plaintiff in the sum of RM10,000 by way of special damages with interest at 4%pa from the date of judgment to the date of realisation, general damages to be assessed and costs of RM248.

FINDING OF FACTS

[2] The relevant finding of facts by the trial judge may be narrated as follows:

[3] Defendants 1 to 6 are the members of the JKKK, ie Kampung Development and Security Committee ('the Committee'), while defendant 7 was at all material time and currently is the state assemblyman for Serkam Melaka and also an Executive Councillor in the state of Melaka. Defendant 8 is the occupant of the house which is the subject matter herein.

[4] With effect from 5 May 1997, the plaintiff became the registered owner of 5/8 undivided share in the land held under MCL 554 Lot 1194 in the mukim of Serkam district of Jasin ('the land') which was purchased through her husband (SP2) from the former owners Hj Wahab bin Mohamad (deceased) and Ismail bin Hamid at a consideration of RM14,000.

[5] On the land, the plaintiff has at her own expense built a semi-permanent house which was occupied by defendant 8 ('the house').

[6] In the month of May 2001, without the consent and permission of the plaintiff, the Committee had demolished the house so as to replace it with another house under the Projek Perumahan Rakyat Termiskin (the Poor Citizens Housing Project) ('the Project').

[7] The plaintiff claims special damages of RM10,000 for the house, in addition to general damages arising from the demolition.

RIGHT TO APPEAL

[8] By way of a preliminary objection, it was submitted by Mr Yusof Rahmat learned counsel for the respondent that the value of the subject matter in this appeal is RM10,000 and so under s 28(1) of the Courts of Judicature Act 1964 ('s 28(1)'), the defendants could only appeal on a question of law.

[9] Datuk Hj Md Latip bin Sarrugi learned counsel for the defendant contended to the contrary.

[10] The short answer to this preliminary objection is to be found in the order of the trial court against which this appeal was preferred. The order and the appeal against it were not merely confined to the value of RM10,000. The RM10,000 represented special damages only. The order also includes general damages to be assessed by the trial court.

Section 28(1) reads as follows:

> 28 Civil appeals from subordinate courts
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> (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject matter is ten thousand ringgit or less except on a question of law.

[11] On a plain reading of s 28(1), I am unable to find any substance in the submission presented for the plaintiff. I have no difficulty in dismissing the preliminary objection. I hold that the value of the subject matter in this appeal is far beyond the scope of s 28(1), in which case the 'question of law' requirement does not apply to the defendants' statutory right of appeal.

TRESPASS

[12] In essence, it was contended for the defendants that:

(1) Defendant 8 was at the material time occupying an old house and so there was no reason for the plaintiff to spend RM10,000 to build a semi permanent house for defendant 8 to stay in, adding that there were three stages of the building occupied by defendant 8 viz first the old house built on the land prior to April 1997, secondly the (semi permanent) house for which the plaintiff has spent RM10,000 and finally the Project house, which was built on the same site covering the same area;

(2) Defendant 8 was occupying the Project house as a licensee for life, during which no one including the plaintiff could interfere with defendant 8's occupation of the Project house, which would only revert to the plaintiff upon the demise of defendant 8, and so the plaintiff has incurred no loss of RM10,000, as has been erroneously found by the trial judge;

(3) In any event, after five years the value of the (semi permanent) house would have depreciated to less than the RM10,000 expended by the plaintiff as the cost of construction thereof; and

(4) Defendants 1 to 7 could not be said to have committed trespass on the plaintiffs land as they have entered the land with defendant 8's consent.

[13] In response, it was argued for the plaintiff that as against the defendants, the plaintiff has succeeded in establishing trespass to the plaintiff 's house and is therefore entitled to the special and general damages awarded by the trial judge.

[14] While I do commend the efforts of the defendants' learned counsel for raising the aforesaid submissions, I am of the view that the question for determination in this appeal is whether the trial judge has occasioned any error in her decision in holding that the defendants had committed trespass to the house which had been demolished by the defendants and that the plaintiff was entitled to the award of special and general damages.

[15] In my view, the specific finding of fact by the trial judge as alluded to above is sufficiently supported by the weight of evidence adduced at the trial. In fact, this finding of fact is not amenable to dispute as the defendants in para 6(d) of their statement of defence has pleaded as follows:

> (d) Bila rumah separuh kekal itu uzur dan usang, Defendan-Defendan untuk meringankan beban keluarga Defendan Kelapan dan anak-anaknya yang hidup dalam suasana yang cukup dhaif yang amat memerlukan pembelaan, berdasarkan kepada peruntukan sebanyak RM10,000 di bawah Penyelaras PROGRAM PERUMAHAN RAKYAT TERMISKIN ('PPRT') menggantikan Rumah Berkenaan (separuh kekal) dengan sebuah mmah baru kekal (rumah batu).

[My translation:

> When the semi permanent house was dilapidated, and with a view to reducing the burden of defendant 8 and his children who were living within a very pathetic scenario which really needed protection, and having regard to the allocation of RM10,000 available under the Poor Citizen's Housing Project (PPRT), the defendants had replaced the semi permanent house with a new permanent house (brick house).]

[16] Paragraph 6(d) is in effect an admission by the defendants that the defendants had demolished the house and replaced it with the Project house.

[17] Even by accepting the defendants' submission that defendant 8 has given his consent to the other defendants to enter the land, defendant 8 is a mere licensee who has neither been the owner of the land nor the (semi permanent) house. Defendant

A 8 has no legal capacity to give any consent to the defendants to enter the land; or to carry out demolition of the house which is the plaintiff's property, however dilapidated the house might have appeared to be. The consent can only be given by the plaintiff as the registered owner of the land and the house.

B **[18]** I have no doubt whatsoever that all the defendants have been actuated by the best of intentions and the most laudable of objectives in demolishing the house and replacing it with the Project house as this would most certainly have alleviated the problems of the poor including defendant 8. However, the consent of the owner, ie the plaintiff is indispensable as the plaintiff shall not be deprived of her property (the house) save in accordance with the law: art 13 of the Federal Constitution. In my C view, the defendants' demolition exercise without the plaintiff's consent constitutes trespass in law, thereby giving rise to the remedy of damages to the aggrieved party, ie the plaintiff.

[19] In the circumstances, I am unable to find any error in the trial judge's D decision.

CONCLUSION

[20] On the foregoing grounds, I hold that this appeal is without merit, which I E hereby dismiss, with the result that the above decision of the trial judge is affirmed.

COSTS

[21] As the plaintiffs preliminary objection based on s 28(1) has not been sustained F and the defendants' appeal pertaining to the issue of trespass has been dismissed, I am of the view that in relation to costs, the parties' respective position has been placed in equilibrium, in which case, I order the parties to bear their own costs respectively.

Appellants' appeal dismissed.

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Reported by K Krishnan

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